

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Danny C. Vogel) Group Art Unit: 2668 **RECEIVED**
Serial No.: 09/919,221) Examiner: Steven Blount **CENTRAL FAX CENTER**
Filed: July 31, 2001) Atty. Docket No.: 01-138 **MAY 10 2006**
For: EFFICIENT HIGH DENSITY)
VOICE PROCESSOR)

RESPONSE TO OFFICIAL ACTION

Restriction/Election Requirement

Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir

This response is presented to the Office Action mailed January 10, 2006, wherein the Examiner required restriction pursuant to 35 U.S.C. §121. Election is hereby made, *with traverse*, to prosecute Group II, i.e., claims 10-23.

Remarks/Arguments

Reconsideration of the restriction is respectfully requested. In the instant case, a first office action on the merits has already been received and a response made. Hence, all original claims have previously been considered.

Restriction is not required by 35 U.S.C. §121, as suggested in the Office Action. Congress wisely granted the *discretion* to restrict applications. According to 35 U.S.C. §121 "... the Commissioner *may* require the application to be restricted...." (emphasis added).

Furthermore, MPEP § 803 lists two criteria that must be present for restriction to be proper:

- 1) The inventions must be independent or distinct as claimed; and
- 2) There must be a serious burden on the examiner if restriction is required.

In searching the Group II claims, the class and subclass for the Group I claims will undoubtedly be searched, to ensure that no relevant art is overlooked. For this

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